

Condo Garages and Deck Repairs – I Declare!

By Judith Johanssen

Some say that living in a condominium community is the best – it's easy – it's a turn key operation and it's worry free. You simply buy your unit and that's all you have to be concerned with. Well, tell that to the people in these two recent court cases.

The first case involved a unit owner and that owner's garage. This story began in 1989 when the owner of unit #6 sold the unit and its garage to S. In 1992, S passed title to just the garage to G. G then conveyed title to the garage to B through a Warranty Deed for \$4,000. At that time, B owned condo unit #7.

In 1992, before B took title to the garage, the condominium's Declaration and Bylaws were amended to state that this particular garage that was then owned by G was reallocated to unit #7.

When B lost his unit #7 in a foreclosure in 1997, he argued he still owned the garage because he had a Warranty Deed that had conveyed title to the garage to him, plus it was recorded on the Land Records.

The condominium association filed a lawsuit to quiet title in the garage. That means the association was challenging B on his claim that he owned the garage.

The association argued that their Declaration and Bylaws prevented any unit owner from transferring his unit without transferring the garage that goes with it. Therefore, the court declared the 1992 Declaration and Bylaws amendment that had reallocated the garage unit to unit #7 invalid, and B not the owner of that garage. Under the Declaration, unit owners were allowed to lease garages, but they could not sell them separately.

This court granted the condo association's motion to quiet title in the garage providing the association paid Mr. B \$4,000, the amount he had paid for it.

The second case involved a dispute between the declarant (developer) of a condominium complex and the unit owners' condominium association over who had the authority to repair and replace decks that were causing water leaks in units.

The declarant's expert found a design flaw in the cantilevered decks that caused water to leak into some units, so the declarant hired his general contractor to demolish and rebuild the decks. The association did not approve of the demolition and repair plan and went to court for an injunction to stop it. The association wanted to use its own contractor, not the declarant's, because the declarant's contractor caused the problem in the first place.

In court, both the declarant and the association relied on the Declaration to prove their points. The association claimed the declarant was *liable* for the damages, but did not have the authority to *perform* the repairs. The declarant argued he had the right to control and perform construction to repair the decks' design flaws without the association's approval because those repairs arose under his warranty obligations.

The court agreed with the declarant – the Declaration's language was clear – finding he had the authority to make the repairs without the consent or approval of the association.

Maybe the lesson here is that to enjoy carefree condominium community living, know your Declaration, Bylaws, Rules and Regulations.

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